



## **TERMS & CONDITIONS**

### **1. ROLE OF TJ BUILDING CONSULTANTS**

#### **1.1 Professional Standard of Care**

In performing the Services, TJ Building Consultants shall:

- (a) exercise the degree of reasonable skill, care and diligence;
- (b) and maintain the ethical standards normally expected of the profession of building surveyors.

#### **1.2 Notice of Matters Likely to Change Scope or Timing of Services**

If TJ Building Consultants becomes aware of anything which may change the scope or timing or cost of the Services then it shall as soon as practicable give written notice to the Client. The notice shall as far as practicable contain particulars of the change.

### **2. PAYMENTS TO TJ BUILDING CONSULTANTS FOR SERVICES**

#### **2.1 Client to Make Payment**

In consideration of the promise by TJ Building Consultants to perform the Services, the Client promises to pay to TJ Building Consultants the fees and the expenses as set out in **TJ Building Consultants' Letters**.

The client shall pay the consultant:

- a) The fee and the reimbursable expenses as set out in the accompany letter together with such other amounts in respect of other services agreed to be provided;
- b) Reasonable adjustments to the fee and reimbursable expenses to reflect the additional costs, expenses, liabilities, losses or other amounts incurred or suffered by the consultant in the performance of services and arising out of or in connection with any event or matter beyond the consultants control; and
- c) To the extent that amounts payable under this agreement are not expressed to be GST inclusive, an additional amount for GST incurred by the consultant in relation to the supply of the services ("GST")

#### **2.2 Timing of Payment**

At or after the time that any part of the Services are performed by TJ Building Consultants, TJ Building Consultants may give the Client an account for that part of the Services performed and for any expenses incurred. The Client shall pay the full amount owing in respect of each account within fourteen (14) days of issue of the account.

#### **2.3 Interest on Overdue Payment**

In addition to all other rights and remedies of TJ Building Consultants, if the Client fails to pay all monies as and when due, TJ Building Consultants shall be entitled to recover interest at the higher of 15% per annum and the rate that is 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983. In the event of a recovery claim the client shall be liable for any collection agency commissions payable fixed at the rate charged by the agency from time to time.

#### **2.4 Disputed Claims**

If the Client disputes the whole or any portion of the amount claimed in an account submitted by TJ Building Consultants, then it shall pay that portion of the amount stated in the account which is not in dispute and it shall notify TJ Building Consultants in writing of the reasons for disputing the account. If it is established that some or all of the amount in dispute ought properly to have been paid at the time it was first claimed, then the Client shall pay the amount finally established together with interest on that amount in accordance with clause 3.3.

#### **2.5 Payment of Costs if Building Works Delayed**

If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by TJ Building Consultants, then the Client shall pay to TJ Building Consultants a reasonable sum of money to cover the consequential costs and expenses suffered by TJ Building Consultants as a result of the delay.

## **2.6 Effect of Termination on Right to Payment**

If the engagement of TJ Building Consultants is terminated for any reason other than for breach of these Terms of Engagement by TJ Building Consultants, then TJ Building Consultants shall be entitled to pro rata payment for the Services carried out and consequential costs and expenses incurred as a result of the termination, for the period up to and including the date of termination.

## **2.7 Changes in Laws**

If after the date of these Terms of Engagement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or expenses incurred by TJ Building Consultants in performing the Services, then the fees and expenses otherwise payable to TJ Building Consultants under these Terms of Engagement shall be increased or decreased accordingly.

## **3. SCOPE OF LIABILITY**

### **3.1 Direct and Indirect Loss**

The liability of TJ Building Consultants to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise shall be limited to the direct cost of rectifying the Building Works.

### **3.2 Maximum Amount of Liability**

The maximum liability of TJ Building Consultants to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be the amount of \$50,000.00.

### **3.3 Release**

The Client releases TJ Building Consultants from, and agrees that TJ Building Consultants is not liable for, any liability or loss arising from or any costs incurred in connection with the Services in excess of the TJ Building Consultants' liability determined in accordance with clause 4.2.

### **3.4 Duration of Liability**

TJ Building Consultants shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract tort or otherwise, at the expiration of one (1) year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against TJ Building Consultants (or any employee of TJ Building Consultants) in respect of the Services after that date.

### **3.5 Extent of Warranty**

Except to the extent imposed by law or specifically provided for in these Terms of Engagement, TJ Building Consultants does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services. If, apart from this clause, any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded. Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to these Terms of Engagement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

### **3.6 Indemnity**

The Client shall indemnify and keep indemnified TJ Building Consultants from and against all suits, actions, claims or demands by any person for any loss, damages, expense or costs as a result of any negligence or default by the Client.

## **4.0 TERMINATION OF SERVICES**

### **4.1 Termination by Client**

Subject always to the provisions of the Building Act 1983 (as amended), the Client may by notice in writing served on TJ Building Consultants terminate the TJ Building Consultants' engagement under these Terms of Engagement:

(a) If TJ Building Consultants is in breach of the provisions of these Terms of Engagement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Client may allow) of the service by the Client on TJ Building Consultants of a notice requiring the breach to be remedied; or

(b) If the Client serves on TJ Building Consultants a notice requiring that these Terms of Engagement be terminated on a date specified in the notice being not less than sixty (60) days after from the date of issue of the notice.

**4.2 Termination by TJ Building Consultants Subject always to the provisions of the Building Act 1993 (as amended), TJ Building Consultants may by notice in writing served on the Client terminate TJ Building Consultants' obligations under these Terms of Engagement:**

(a) If the Client is in breach of the conditions of any part of clause 3 hereof and the breach has not been remedied within seven (7) days (or such longer period as TJ Building Consultants may allow) of the service by TJ Building Consultants on the Client of a notice requiring the breach to be remedied; or

(b) If the Client is in breach of the provisions of any other clause hereof and the breach has not been remedied within twenty-eight (28) days (or such longer period as TJ Building Consultants may allow) of the service by TJ Building Consultants on the Client of a notice requiring the breach to be remedied; or

(c) If TJ Building Consultants serves on the Client a notice requiring that these Terms of Engagement be terminated on a date specified in the notice being not less than sixty (60) days after the date of the notice.

**4.3 Termination Not to Affect Rights in Respect of Prior Breaches**

Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the provisions of these Terms of Engagement which occurred prior to the date of determination.

**4.4 Work-in-Progress**

If TJ Building Consultants obligations are terminated, then the Client shall pay for all work in progress performed by TJ Building Consultants up until the date of termination.

**5. GENERAL MATTERS**

**5.1 Transfer and Assignment**

(a) TJ Building Consultants and the Client each binds itself and its partners (if any), successors, executors, administrators, permitted assigns and legal representatives to the other party to these Terms of Engagement and to the partners (if any), successors, executors, administrators, permitted assigns and legal representatives of the other party in respect to all covenants and obligations of these Terms of Engagement.

(b) Neither TJ Building Consultants Nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under these Terms of Engagement.

(c) Nothing contained in this Clause shall prevent TJ Building Consultants from employing such persons or companies as it may deem appropriate to assist it in the performance of these Terms of Engagement.

**5.2 Consultants**

If circumstances arise which require the services of a specialist or expertise outside the field of TJ Building Consultants, then TJ Building Consultants may with the prior approval of the Client engage the appropriate consultant. The consultant shall be engaged at the Client's expense and on its behalf. The Client's approval shall not be unreasonably withheld.

## 6. DEFINITION AND INTERPRETATION

### 6.1 Definitions

Except where the context requires otherwise: “the Client” means the owner of the Property and or includes the agents (including the builder), officers and employees of the owner; “fees”, “expenses” and “Services” means the fees, expenses and Services referred to in TJ Building Consultants Letters to the Client; “TJ Building Consultants Letters” means TJ Building Consultants correspondence setting out its proposal to the Client and its confirmation of its engagement by the Client; “Building Works”, “owner” and “Property” mean the Building Works, owner and Property described on the Application for the Building Permit.

### 6.2 Severability

The parties agree that a construction of these Terms of Engagement that results in all the provisions being enforceable is to be preferred to a construction that does not so result. If, however, a provision of these Terms of Engagement is illegal or unenforceable, then:

(a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed; and

(b) in any other case, the whole provision is severed and the remainder of these Terms of Engagement continue in force.